Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 4(g) of the Cable Television Consumer Protection Act of 1992	)	MM Docket No. 93-8
	)	
Home Shopping Station Issues	)	

To: The Commission

OPPOSITION TO REQUESTS FOR EXPEDITED CONSIDERATION

The Center for the Study of Commercialism ("CSC") respectfully submits this Opposition to the requests for expedited action filed by Silver King Communications ("SKC"), Blackstar Communications, Jovon Broadcasting Corporation and Roberts Broadcasting Company ("the Joint Parties") and Representative Edolphus Towns ("Rep. Towns") in the above proceeding. These requests ask the Commission to complete this proceeding before June 2, 1993, well in advance of the 270 day deadline provided in Section 4(g)(2) of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").

None of these requests demonstrate good cause why the Commission should expedite a decision in this critical rulemaking. The Commission should take whatever time it needs within the 270 day period allotted by Congress to conclude this proceeding with such thoroughness as is necessary to insure that the public interest is served.

I. ANY HARM TO STATIONS PREDOMINANTLY DEVOTED TO HOME SHOPPING THAT WOULD OCCUR SHOULD THE COMMISSION ISSUE A DECISION AFTER JUNE 2, 1993 IS ENTIRELY SPECULATIVE.

SKC constructs a parade of horribles that it claims will occur in the event the Commission finds that home shopping stations are eligible for must carry status after June 2, 1993. It

claims that if the instant proceeding is not decided "well before June 2, 1993,...[m]any cable operators will have already filled their complement of must carry signals by June 2," and therefore, "home shopping stations will, as a practical matter, be excluded from the pool of qualified local must-carry signals for at least six months, if not longer,..." SKC Request at 4 [Emphasis added].

The harm that SKC presumes will come from a post-June 2 decision is just that - a presumption. There is nothing in the 1992 Cable Act which prevents cable operators from carrying home shopping stations prior to or after June 2. Moreover, there are few instances in which over-the-air home shopping stations could, theoretically, be denied must carry status for any length of time following a Commission decision in their favor. And, contrary to SKC's claims, there is almost no chance that these stations would have to wait any longer than 30 days.

Pursuant to Section 4(b) of the 1992 Cable Act, cable systems with more than 12 channels are required to reserve up to one-third of their channels for the carriage of local commercial television stations.[1] Thus, there are two general scenarios under which home shopping stations can demand carriage should the Commission find that they are eligible for must carry:

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[1]Cable systems with fewer than 12 channels need only reserve 3 channels for must carry-eligible stations, unless the system has 300 or fewer subscribers, in which case there is no must-carry requirement. Since the number of cable systems with fewer than 12 channels is minuscule, for purposes of discussion here, CSC will assume that a system has greater than 12 channels. In any event, the same principles discussed below would apply equally to cable systems with fewer than 12 channels.

A. Cable Systems Which Have Not Filled Their Must Carry Capacity and Which Have Previously Declined to Carry Over-the-Air Home Shopping Stations.

In the case of a cable system which has not used its full one-third complement of must-carry stations and which had not previously carried a particular home shopping station, a Commission decision permitting must carry for home shopping stations would permit such a station to demand immediate carriage.[2] There is every reason for the Commission to expect that cable operators will obey the law by fully complying with such requirements without delay.[3]

B. Cable Systems Which Have Filled Their Must Carry Capacity and Which Have Previously Declined to Carry Over-the-Air Home Shopping Stations.

Carriage of home shopping stations could be temporarily delayed in only one limited situation, i.e., where a cable operator, having already filled its one-third must carry capacity, and having previously chosen not to carry an over-the-air home shopping station voluntarily, decides that it would now prefer to fill a slot in that must carry complement with such a station.

This situation is extremely unlikely to occur, however. It is improbable that a cable

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[2]The customer service standards regulations appear to require a cable operator to give subscribers 30 day notice of any changes to its channel line-up. See, Report and Order in MM Docket No. 92-263 (Adopted March 11, 1993). However, in the must carry proceeding, the Commission waived that notice in certain cases. Report and Order in Docket 92-259 (Adopted March 11, 1993) at 65, n.322. The Commission can act similarly in the event it decides that home shopping stations are eligible for must carry.

[3]In the unlikely event that a cable system refuses to recognize broadcasters' must carry rights for any reason, the Commission's regulations provide for a complaint procedure to correct such a refusal. 47 CFR §76.61 (1993).

operator which had made the decision not to carry an over-the-air home shopping station voluntarily would choose to carry that station just because the Commission had now deemed it eligible for must carry rights. In any event, a home shopping station has no statutory or other right to be carried on systems already carrying their full must-carry complement. In such

occasion cannot be blamed on the Commission's decision-making process.[5]

II. THE COMMISSION MUST USE WHATEVER TIME IT NEEDS WITHIN THE 270 DAY PERIOD TO RENDER A DECISION IN THIS PROCEEDING.

As evidenced by the numerous and voluminous comments and reply comments filed in this proceeding, there are a number of critical issues which the Commission has been asked to resolve here. They include, but are not limited to, the extent of the Commission's authority to limit commercialization over the airwaves and whether broadcast stations which are predominantly devoted to the broadcast of commercial matter are serving the public interest, convenience and necessity. These issues relate to the heart of the public interest standard of the Communications Act, and must not be passed over in haste just to insure that some home shopping stations get an extra month of must-carry privileges.

For these reasons, the Commission should take whatever time it deems necessary to examine the issues raised in this proceeding and to weigh fully the competing considerations.

There is nothing in the plain language of the 1992 Cable Act nor the legislative history which dictates otherwise. The plain language of Section 4(g)(2) the Act requires the Commission to complete this proceeding "[w]ithin 270 days of enactment" of the 1992 Act, i.e., by July 3, 1993. While the Commission naturally has the discretion to finish sooner, the Markey-Lent colloquy upon which the Joint Parties and Rep. Towns rely does no more than state the obvious, and in any event does not evidence any Congressional intent that the Commission

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[5]CSC notes that in a typical rulemaking, the rules do not become effective until 30 days after publication in the Federal Register. The Commission has the authority, however, to make rules effective sooner, "for good cause found...." 5 USC §553(d)(3). Thus, as an alternative to expediting this proceeding, if the Commission found any merit to SKC's request, it can provide adequate relief without expedition by making any new rules in this proceeding effective upon publication in the Federal Register.

expedite this proceeding. More importantly, this colloquy was expressly disavowed in a later colloquy involving the Chairman of the House Energy and Commerce Committee, John Dingell, the Chair of the Conference, and Rep. Dennis Eckart, a Conferee and a sponsor of the amendment which, as modified in conference, became Section 4(g).[6]

CONCLUSION

For the foregoing reasons, the CSC urges that the Commission carefully consider the issues raised in this proceeding, deny all requests to expedite action in this proceeding, and grant all other relief as is just and proper.

Respectfully submitted,

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[6]Rep. Eckart stated that the purpose of the colloquy was to "clarify the meaning of the bill's provisions on home shopping stations" and to "correct the misimpression created by written statements introduced in the record by Messrs. MARKEY and LENT during the debate." 138 Cong. Rec. E2908 (October 2, 1992)(statement of Rep. Eckart). Rep. Lent was not a conferee.

CERTIFICATE OF SERVICE

I, Gigi B. Sohn, certify that on this date, May 6, 1993, I have caused to have served copies of the foregoing "Opposition to Requests for Expedited Consideration" by United States mail, postage prepaid, to the following:

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